IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 993 of 2004

Between:

P.Narasimha Reddy, S/o Sri P.Penchala Reddy,
Door No.26-1-662(I), Bhakthavatchala Nagar, A.K.Nagar Post Office, Nellore - 4.

..... PETITIONER

AND

1 The Chief Postmaster General, Hyderabad Circle, Hyderabad.
2 The Post Master General, Vijayawada Region, Vijayawada.
3 The Senior Superintendent of Post Offices, Nellore Division, Nellore.
4 The Post Master, Head Post Office, Durgamitta, Nellore.
5 Mr.D.Ramanaiah, Post Master, Head Post Office,
Dargamitta, Nellore.
6 Dupati Penchala Midhun, s/o D.Vajrapani,
R/o H.No.23/710, Sakilavari Street, Fathekhanpet, Nellore.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ Order or direction more particularly one in the nature of Writ of Certiorari: Call for the records relating to and connected with the order and judgment in OA No.218 of 2003 dated 1-12-2003 on the file of the Learned Central Administrative Tribunal, Hyderabad and quash or set aside the same as arbitrary, illegal, un-warranted and violative of Articles 14 & 16 of the Constitution of India

Counsel for the Petitioner: MR.SIVA

Counsel for the Respondent Nos.1 to 5: Mr. A. Rajasekhara Reddy, Standing Counsel for Central Government

Counsel for respondent No.6: Mr. P. Krishna Reddy,

The Court made the following :

HON'BLE SRI JUSTICE BILAL NAZKI

AND

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P. No. 993 of 2004

JUDGMENT: (Per Hon'ble Sri Justice Bilal Nazki)

In this writ petition an order dt. 1.12.2003 passed by the Central Administrative Tribunal, Hyderabad in O.A.No. 218 of 2003 is challenged.

The writ petitioner is the 6th respondent before the Tribunal. He submitted that he passed Intermediate examination, but could not continue further education, therefore he was in search of a job. A notification dt. 11.1.2002 came to be published. By this notification applications were called for filing up the post of Gram Dak Sevak Packer (earlier known as Extra Departmental Packer). The conditions for eligibility were,

i. "Age: The applicant should have completed 18 years of age on the date of notification. Maximum age

upto which a person appointed to the post can be retained in service will be 65 years;

ii. Educational Qualifications: VIII class pass, but preference will be given to the matriculation or equivalent examination. Marks secured in the additional subject for second language will be ignored. No weightage need to be given for any qualification (s) other than matriculation or the equivalent;

iii. Income: The person applying for the post must have adequate means for livelihood;

iv. Residence: The person to be appointed to the post must take his/her residence in the BO village before the appointment where the post office is located (for columns 3 and 4 certificates from officers below the rank of MRO should be enclosed)"

The petitioner's case was that he was a matriculate and was eligible on other counts also. He secured 407 marks out of 500 in matriculation, while the 6th respondent had secured 442 marks. The verification of the documents was scheduled to be held on 15.3.2002, but it was postponed to 20.4.2002. The earlier rules being Posts and Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964 were superseded by new rules known as Department of Posts Grameen Dak Sevak (Conduct and Employment) Rules 2001. These rules were in force when the notification was issued. The petitioner had produced documents showing that the landed property was gifted to him. Under the rules, the Sevaks are required to have alternate independent source of income preferably derived from landed property or immovable assets. The 6th respondent did not fulfill the requirement of having income from landed property and because of this, he was not considered fit for selection, although he had secured higher marks in SSC examination than the petitioner. Since 6th respondent had higher merit than the petitioner, he filed

O.A.No. 218 of 2003 which was allowed and the Tribunal has ordered appointment of 6th respondent by quashing the appointment of the writ petitioner.

The 6th respondent who was the applicant before the Tribunal contended that what was the requirement in terms of the notification was that the person applying for the post must have adequate means for livelihood and it is nowhere mentioned in the notification that the said income must be derived only from landed property or immovable property. It was held by the Tribunal on the basis of some earlier judgments that the income from the landed property was not an essential requirement and ED staff should have some income from other sources. The case of the applicant before the Tribunal was that his father was running a barber shop and he was also working in that shop and getting an income of Rs.9,000/- P.A from the said profession, he being a barber. To this effect he had produced an income certificate issued by Mandal Revenue Officer. The Tribunal found that the applicant had an alternate source of income, therefore he was eligible to be appointed and since his merit was higher than the selected candidates, he should be appointed.

In the notification which was issued it contains a clause as far as income was concerned, which is as follows,

> "Income: The person applying for the post must have adequate means for livelihood;"

In the counter filed by the official respondents before the Tribunal it is stated that the last date for receipt of applications was 8.2.2002. In response to the notification, 38 applications were received. The Postmaster, fixed a date for interviews as 15.3.2002. The interviews were postponed and ultimately they were held on 20.4.2002. Out of 38 candidates who applied, 4 candidates did not appear before the selection committee and 23 candidates were found ineligible and the remaining 11 candidates were found eligible for consideration. The writ petitioner had secured 407 marks in SSC and he had also submitted an income certificate. He had also submitted

registered deeds with respect to landed property. 6th respondent who was the applicant before the Tribunal filed a complaint on 22.4.2002 to the Chief Postmaster General, A.P Circle, Hyderabad in which he stated that some of the officers had demanded a bribe of Rs.20,000/- from him and as he had not paid the bribe, he was not selected, although he had better merit than the selected candidates. An enquiry was ordered into the complaint and it was found that the selection was not in order. The following irregularities were found,

1. The last date fixed for the receipt of applications is 8.2.02 and the application of Sri P. Narasimha Reddy was received by the Postmaster, Dargamitta HO (R-4) on 5.2.02 through A.K. Nagar, R.L. No. 35/4.2.02. The Income certificate for Rs.12,000/- through lands was issued by the MRO, Nellore on 30.3.02 (Annexure R-2) it was appended to the application which was received on 5.2.02.

2. Similarly the regd. Deed in respect of transfer of 0.52 acres of land at Survey No. 708 of Mandapalli village in Chejarla Mandal was registered under Regn. No. 217/2002, dated 6.4.02 of Sub Registrar, Podalakur (Annexure R-3). This was also appended to the application which was received on 5.2.02"

The registration of the document was done on 6.4.2002 by the Sub-Registrar. The application was filed on 5.2.2002, the last date being 8.2.2002, but surprisingly along with the application the registered deed was also appended which was registered on 6.4.2002 i.e., two months after filing of the application. Obviously the document was annexed to the application after the last date. One of the conditions in the notification was condition No.4, which reads as under,

> "All the required documents certificates should be submitted along with the application. No documents will be accepted later or in piece meal. Application not

accompanied with all the necessary certificates or with incomplete information will not be taken up for consideration and no further correspondence will be entertained."

Condition No.5 in the notification is also relevant, which reads as under,

"Applications received in this office after the fixed date i.e., 8.2.2002 will be rejected. No application or documents will be accepted by hand or by any source other than by Regd. Post."

Initially the interviews were fixed on 15.3.2002, but they were postponed to 20.4.2002. Obviously it was found that the writ petitioner was not eligible and in order to give him time to produce an income certificate and the documents pertaining to the landed property, the interviews were postponed to 20.4.2002. In the meantime on 6.4.2002 the writ petitioner obtained the registered deed with respect to the landed property. Therefore, in any case, the writ petitioner could not have been appointed.

Now coming to the 6th respondent who has succeeded in the Tribunal, it is again difficult to accept that he could also have been appointed. It is also submitted that although he had better merit and he had given an income certificate, but he did not disclose any source of income, therefore he was not considered. Disclosure of source of income was necessary as per the notification dt. 11.1.2002. He did not disclose the source of income, therefore his candidature was not considered. The contention of the learned counsel for the respondent No.6 is that since he had submitted an income certificate, therefore it was not necessary for him to disclose the source of income. Rule (iii) of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001 reads as under,

"A Sevak shall fulfill the compulsory condition of alternate independent source of income preferably derived from landed property or immoveable assets as a pre condition for employment as Sevak and shall maintain the same after his employment as Sevak."

According to the learned counsel for the 6th respondent, this rule does not exclude the persons who have independent source of income derived from sources other than the landed property or immovable assets. That may be true, but the 6th respondent did not at all disclose the source of his income. If it is accepted that merely saying that there was an income from alternate independent source of income was compliance of the rule, then anybody can claim any income without disclosing any source of income. The intention of the rule was that the independent source of income should also be disclosed, therefore it is being insisted for even those who have landed property to produce documents. The Supreme Court in a case did not even accept the property belonging to the husband as an alternate source of income of his wife. In a judgment in *Gundeli Narasimlu Vs. Smt. B. Bala Lakshmi & others* (Civil Appeal No. 7894 of 2001), decided on 19.11.2001, it was held,

> "In our opinion, the High Court and the Tribunal were not right in coming to the conclusion that because the husband of the respondent had immovable property, that was sufficient to entitle her to be considered for appointment. The post, to which the appointment was to be made, would entail monies being received and then handed over to the Government. It is for this reason that in the notification it was stated that the eligible candidates should have adequate means of livelihood i.e., have owned landed property. The applicant, therefore, was obliged to have landed property or immovable property in her own name and as admittedly the respondent did not have any such property, the O.A. filed by her should not have been entertained by the Tribunal."

For these reasons, we set aside the order of the Tribunal to the extent it ordered appointment of the 6th respondent and uphold the order to the extent it quashed the appointment of the writ petitioner. The whole selection appears to be bad and therefore the official respondents are directed to make fresh selection after issuing a fresh notification. The writ petition is accordingly disposed of. No costs.

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BNJ.

Dt. 5.11.2004

KR

_____ PSNJ.

Sd/-

ASST. REGISTRAR

To

1 The Chief Postmaster General, Hyderabad Circle, Hyderabad.
2 The Post Master General, Vijayawada Region, Vijayawada.
3 The Senior Superintendent of Post Offices, Nellore Division, Nellore.
4 The Post Master, Head Post Office, Durgamitta, Nellore.
5 Mr.D.Ramanaiah, Post Master, Head Post Office, Dargamitta, Nellore.

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